

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

MOBILE EQUITY CORP.,

Plaintiff,

v.

WALMART INC.,

Defendant.

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Civil Action No. 2:21-cv-126-JRG-RSP

JURY TRIAL DEMANDED

OPPOSED MOTION TO AMEND THE SECOND AMENDED
DOCKET CONTROL ORDER

Defendant Walmart Inc. (“Walmart”) hereby files this Motion to Amend the Second Amended Docket Control Order and states as follows.

I. ARGUMENT

Pursuant to the Court’s Order Setting the Scheduling Conference, the Parties were instructed to file a Proposed Docket Control Order two weeks after the Scheduling Conference (July 29, 2021), Dkt. No. 17. On or about July 28, 2021, counsel for Walmart indicated that the undersigned had a conflicting claim construction hearing scheduled on the same date in a pending matter in the Eastern District of Texas, Sherman Division.¹ On July 29, 2021, the parties filed a Joint Motion for Entry of Docket Control Order, Dkt. No. 19. As stated in the Joint Motion, Walmart respectfully requested that the Court re-set the claim construction hearing date to a date convenient with the Court and as close to the current December 16, 2021 date as possible. *Id.* Counsel for Walmart, together with counsel for Plaintiff Mobile Equity Corp. (“MEC”), have conferred with the Courtroom Deputy for Magistrate Judge Payne on the Court’s availability for potential dates to reschedule the claim construction hearing. The parties were able to confirm that January 6, 2022 is currently available on the Court’s calendar.²

Furthermore, the claim construction briefing deadlines in both the instant matter and the *R2 Solutions* matter are nearly identical. The congested deadlines will be unduly burdensome to the Walmart team as it would require that they prepare for the claim construction briefing in both

¹ *R2 Solutions LLC v. Walmart Inc.*; 4:21-cv-00091-ALM. The *R2 Solutions* matter was filed on January 29, 2021. Per the Court’s Order in the *R2 Solutions* matter (Dkt. No. 23), on June 9, 2021, the parties submitted their Rule 26(f) Report which included the Proposed Claim Construction Hearing on December 16, 2021. Dkt. No. 26-1. Here, the Court entered its Scheduling Order on July 28, 2021. Dkt. No. 30. Counsel for Walmart Inc. in the *R2 Solutions* matter includes Ms. Kathryn Riley Grasso and Mr. Christian Chessman of DLA Piper LLP, as lead counsel, and Mr. Eric Findlay and Ms. Debby Gunter of Findlay Craft, P.C., as local counsel (“the Walmart Team”).

² The Court also indicated its availability on December 1, 2, and 13. Unfortunately, Walmart’s counsel has previously scheduled work conflicts on those dates.

cases at the same time. Resetting the claim construction hearing and extending the claim construction briefing and some expert deadlines will allow the Walmart team to adequately prepare and analyze the claim construction arguments in the instant matter, as well as adequately prepare and analyze the claim construction arguments in the *R2 Solutions* matter. Therefore, Walmart respectfully requests a limited extension for the claim construction hearing of approximately three weeks, to January 6, 2022, the related briefing, and expert deadlines.

The proposed deadline extensions and proposed hearing date will not disturb the Court's trial setting of May 23, 2022, nor the Court's deadline for filing dispositive motions, February 14, 2022. For the foregoing reasons, Defendant respectfully requests the Court grant this motion and enter the attached Third Amended Docket Control Order resetting the claim construction hearing and extending the claim construction briefing deadlines and expert disclosure deadlines as detailed below. This extension does not affect any other case deadlines.

Current	Proposed	Description/Event
January 31, 2022	February 4, 2022	Serve Disclosures for Rebuttal Expert Witnesses
January 10, 2022	January 14, 2022	Deadline to Complete Fact Discovery and File Motions to Compel Discovery
January 10, 2022	January 14, 2022	Serve Disclosures for Expert Witnesses by the Party with the Burden of Proof
December 16, 2021	January 6, 2022	*Claim Construction Hearing – 9:00 a.m. in Marshall, Texas before Judge Roy Payne
December 2, 2021	December 23, 2021	*Comply with P.R. 4-5(d) (Joint Claim Construction Chart)
November 26, 2021	December 17, 2021	*Comply with P.R. 4-5(c) (Reply Claim Construction Brief)
November 18, 2021	December 9, 2021	Comply with P.R. 4-5(b) (Responsive Claim Construction Brief)

November 4, 2021	November 24, 2021	Comply with P.R. 4-5(a) (Opening Claim Construction Brief) and Submit Technical Tutorials (if any) Good cause must be shown to submit technical tutorials after the deadline to comply with P.R. 4-5(a).
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Dated: October 18, 2021

Respectfully submitted,

By: /s/ Eric H. Findlay

Eric H. Findlay

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Debby Gunter

State Bar No. 24012752

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***COUNSEL FOR DEFENDANT
WALMART INC.***

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2021, a true and correct copy of the foregoing document was electronically filed in compliance with Local Rule CV-5(a) and was served on all counsel who are deemed to have consented to electronic service, per Local Rule CV-5(a)(3).

/s/ Eric H. Findlay

Eric H. Findlay

CERTIFICATE OF CONFERENCE

I hereby certify that counsel have complied with the meet-and-confer requirements of Local Rule CV-7(h) and that this motion is opposed. The personal conference required by the Rule was conducted on October 18, 2021, between counsel for Plaintiff and counsel for Defendant. Plaintiff's counsel is opposed to the relief requested herein, leaving an open issue for the Court to resolve.

/s/ Eric H. Findlay

Eric H. Findlay